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Federal Communications Commission

FCC 97-342

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Amendment of the Commission's) WT Docket No. 97-82
Rules Regarding Installment Payment)
Financing For Personal Communications)
Services (PCS) Licensees)

**SECOND REPORT AND ORDER AND
FURTHER NOTICE OF PROPOSED RULE MAKING**

Adopted: September 25, 1997

Released: October 16, 1997

Comments Due: November 13, 1997

Reply Comments Due: November 24, 1997

By the Commission: Chairman Hundt affirming and dissenting in part and issuing a statement;
Commissioner Quello issuing a separate statement at a later date,
Commissioners Ness and Chong issuing separate statements.

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I. INTRODUCTION

1. By this *Second Report and Order*, we order resumption of installment payments for the broadband Personal Communications Services (PCS) C and F blocks, with the payment deadline reinstated as of March 31, 1998. We adopt disaggregation, amnesty, and prepayment options designed to assist C block licensees experiencing financial difficulties to build systems that will promote competition or surrender spectrum to the Commission for reauction. These provisions will create opportunities to provide service to the public while maintaining the fairness and integrity of our auctions program. We seek comment on proposed changes to our C block rules to govern the reauction of surrendered spectrum in the C block in the accompanying *Further Notice of Proposed Rule Making*.

II. EXECUTIVE SUMMARY

2. The extraordinary procedures we adopt today apply to all C block licensees. In considering the many options presented, which range from merely enforcing our existing rules to completely rewriting our rules after the auction closed, we have considered and balanced the following policy goals.

- Maintaining the integrity of the Commission's rules and auction processes.
- Ensuring fairness to all participants in our auctions, including those who won licenses in the auctions and those who did not, as well as licensees in competing services.

- Resolving issues now in a manner that does not merely postpone the problem.
- Complying with the mandate of our auction authority in Section 309(j) of the Communications Act of 1934, as amended ("Communications Act"), that we ensure "that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses . . ."¹
- Promoting economic opportunity and competition in the marketplace.²

3. Maintaining the integrity of our rules and auction processes is an essential goal. As Senator John McCain observed on September 18, the Balanced Budget Act mandates a series of future spectrum auctions, and the Commission's decisions on C block must not "adversely impact the integrity of the auction process or the confidence that parties would have in the stability of the Commission's auction rules."³ We are not looking to maximize revenues, but to maintain the integrity for all of our future auctions and to ensure that all participants are treated fairly and impartially. These elements are essential if the financial community is to have the stability it requires to fund the new communications enterprises and services for which this spectrum should be used.

4. We conclude that it is in the public interest to immediately adopt provisions to facilitate use of C block licenses without further regulatory or marketplace delay. Certainty is beneficial to all C block licensees and will foster the increased competition we expect in the marketplace. Many small licensees bid amounts comparable to those of other PCS spectrum, yet are being delayed in acquiring financing for their construction while these matters are pending before the Commission. Some of the larger licensees also find that they can move forward only when we settle the regulatory issues. Our actions today are intended to restore regulatory certainty to the marketplace.

5. Consistent with our goals, we have rejected a number of restructuring proposals that would have dramatically changed the amount bid for licenses, and instead offer relief that is more modest in nature. Our menu approach is intended to provide options to facilitate the rapid introduction of service to the public, while recognizing that ultimately the decisions concerning competition and services appropriately are marketplace decisions and should not be determined by government intervention. Our decisions are intended to be fair to current C

¹ See 47 U.S.C. § 309(j)(3)(B). See also 47 U.S.C. § 309(j)(4)(D).

² See 47 U.S.C. §§ 309(j)(3)(A), (B).

³ The Honorable John McCain, *ex parte* letter, September 18, 1997.

block licensees, to bidders who were not successful in their attempts to obtain licenses in this spectrum, and to the public desiring new and innovative competitive services.

6. On March 31, 1997, in response to a joint request from several C block licensees seeking to modify their existing installment payment obligations, and because of other debt collection issues, the Wireless Telecommunications Bureau ("Bureau") suspended the deadline for payment of all C block installment payments.⁴ On April 28, 1997, the Bureau extended the suspension to F block licensees.⁵ We rescind the suspension of payments, effective March 31, 1998. On that date, all F block licensees must resume payments under their original Installment Payment Plan Note (hereinafter in the singular, "Note" and in the plural, "Notes"). Any C block licensee may elect to continue making payments under its Note(s) or may elect one of three options described below. These three options are designed to provide limited relief for C block licensees having difficulty meeting their financial obligations to the Commission while maintaining the fairness and integrity of our auctions program. The election must be made no later than January 15, 1998. Any C block licensee that fails to elect on a timely basis either to continue under its existing Note or one of the available options, will be held to strict adherence with the terms of its existing Note(s). The options are as follows:

- **Disaggregation.** Any C block licensee may elect to disaggregate one-half of its spectrum (15 MHz of its 30 MHz) and surrender such spectrum to the Commission for reauction. A licensee must disaggregate spectrum for *all* of the Basic Trading Area (BTA) licenses it holds within any Major Trading Area (MTA), but need not disaggregate the licenses it holds in other MTAs. In return, the licensee will have the proportionate amount, *i.e.*, 50%, of its down payment on such licenses forgiven. Fifty percent of the down payment for those licenses will be applied towards the debt for the retained spectrum; the licensee will not get a refund or credit of the other 50% of its deposit. The licensee will be prohibited from rebidding for this spectrum, or otherwise acquiring it in the secondary market, for two years from the date of the start of the reauction. C block licensees electing this option will repay over eight equal payments (beginning with the payment due on March 31, 1998) all interest that has accrued and was unpaid due to the payment suspension, adjusted to reflect the reduction in debt obligation. Any prior installment payments made will be credited in full against those amounts.
- **Amnesty.** Any C block licensee may surrender *all* of its licenses, and in return will have all of its outstanding C block debt forgiven. The single exception to the "all-or-

⁴ See Installment Payments for PCS Licenses, *Order*, DA 97-649 (rel. March 31, 1997).

⁵ See "FCC Announces Grant of Broadband Personal Communications Services D, E, and F Block Licenses," *Public Notice*, DA 97-883 (rel. April 28, 1997) at 2.

nothing" requirement for a grant of amnesty applies to licensees that met or exceeded the five-year build-out requirement by September 25, 1997. Those licensees meeting this build-out exception may retain their built-out BTAs, but must also keep the other BTAs in the MTA where the build-out requirement has been met. The licensee choosing the amnesty option will not have its down payment amounts returned. All installment payments made will be refunded or applied to previously accrued interest for retained markets, subject to applicable federal debt collection laws. The licensee may bid on any of its surrendered licenses or any other licenses in the reauction, and there is no restriction on after-market acquisitions.

- **Prepayment.** Any C block licensee may use an amount equal to 70% of its total down payments for the licenses that it wishes to surrender as a credit toward the prepayment of any of its licenses, at face value of the Note. Subject to the amounts available for license prepayment, a licensee must pay off the outstanding principal debt obligations for all BTA licenses it holds within any single MTA, up to the amount of funds it has available. A licensee may also use additional monies (hereinafter referred to as "new money"), to prepay as many of its Notes as it desires. Installment payments made will be available to the licensee as a credit towards prepaying any of its Notes. Interest accrued from the date of the conditional license grant through the Election Date will be forgiven. Licenses that are not prepaid in accordance with this option must be surrendered to the Commission for reauction, in exchange for the Commission's forgiveness of the corresponding debt and permitting prepayment on other licenses under these terms. The remaining 30% of the down payments plus any unapplied portions of the first 70% of the down payments will not be returned or available to licensees. The licensee may not rebid in the reauction for any of the licenses that the licensee relinquishes, and for a period of two years from the start date of the reauction may not otherwise acquire any such licenses in the secondary market.

7. These options will lead to a reauction of C block spectrum that will be open to all entrepreneurs, all applicants to the original C block auction,⁶ and, with the exceptions we outline under the disaggregation and prepayment options, all current C block licensees. In the *Further Notice of Proposed Rule Making*, the Commission seeks comment on proposed rules and procedures for the reauction of any available C block licenses, including auction design, activity requirements, minimum opening bids for each license, application and payment procedures, procedures for filing petitions to deny, and proposals regarding the use of bidding credits.

⁶ But see, paragraph 84, *infra* (where we seek comment on restricting participation in the reauction by any entity that has defaulted on any FCC auction payment).

III. BACKGROUND

8. Incentives to ensure participation by small businesses and other "designated entities" were required by Congress when enacting our authority to conduct auctions, as set forth in Section 309(j) of the Communications Act.⁷ In accordance with its statutory mandate, in the *Competitive Bidding Fifth Report and Order*, the Commission established a variety of incentives to encourage small businesses to participate in the auction of C block 30 MHz and F block 10 MHz broadband PCS licenses.⁸ Provisions to promote participation by small businesses in broadband PCS included limiting eligibility in the initial C and F block auctions to entrepreneurs and small businesses, offering varying bidding credits, and offering installment payment plans. The installment payment plan for C block permitted licensees that qualified as small businesses to pay 90% of the bid price over a period of ten years, with interest only paid for the first six years and interest and principal for the remaining four.⁹ Installment payments for small business F block licensees were limited to 80% of the bid price over ten years, and payments consist of interest only for the first two years, then interest and principal for the remaining eight years.¹⁰

9. On May 6, 1996 and July 16, 1996, the Commission concluded its broadband PCS C block auctions. Ninety bidders (including the C block reauction¹¹ winners) won 493 C

⁷ 47 U.S.C. §§ 309(j)(4)(A), (D).

⁸ See Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, *Fifth Report and Order*, 9 FCC Rcd 5532 (1994) ("*Competitive Bidding Fifth Report and Order*"). Rules were amended in: Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, *Order on Reconsideration*, 9 FCC Rcd 4493 (1994); Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, *Fifth Memorandum Opinion and Order*, 10 FCC Rcd 403 (1994) ("*Competitive Bidding Fifth Memorandum Opinion and Order*"); Implementation of Section 309(j) of the Communications Act - Competitive Bidding, PP Docket No. 93-253, *Sixth Report and Order*, 10 FCC Rcd 136 (1995). See also Amendment of Parts 20 and 24 of the Commission's Rules -- Broadband PCS, Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap, WT Docket No. 96-59, *Report and Order*, 11 FCC Rcd 7824 (1996); Amendment of the Commission's Cellular/PCS Cross Ownership Rule, GN Docket No. 90-314, *Report and Order*, 11 FCC Rcd 7824 (1996).

⁹ 47 C.F.R. § 24.711(b)(3). In addition, there were other installment payment options available for bidders qualifying as entrepreneurs. See 47 C.F.R. §§ 24.711(b)(1)-(3). All bidders in the C block auction, however, qualified as small businesses.

¹⁰ 47 C.F.R. § 24.716(b)(3). Entrepreneurs were also eligible for less favorable installment payment terms. See 47 C.F.R. §§ 24.711(b)(1)-(2).

¹¹ See "18 Defaulted Licenses to be Reauctioned; Reauction to Begin July 3," *Public Notice*, DA 96-872 (rel. May 30, 1996).

block licenses. The broadband PCS D, E, and F block auction concluded on January 14, 1997, and 88 bidders won 491 F block licenses.¹² Net high bids¹³ received for C block 30 MHz licenses, including C block reauction bids, totalled approximately \$10.2 billion; net high bids received for F block 10 MHz licenses totalled \$642.3 million.¹⁴

10. While many C block licenses were purchased for prices below or comparable to those for the A or B blocks, a handful of large bidders bid extremely high prices per pop for major markets, even adjusted for the value of the government financing we provide. The aggregate results of the C block auction, when measured in average price per pop paid, are markedly higher than the other PCS bands, even after adjusting for financing, and even though many individual small licensees bid prices comparable to those paid for the A and B block PCS licenses.¹⁵

11. Earlier this year, the Commission received several requests, from both C and F block licensees, for relief associated with the installment payment program.¹⁶ Some licensees sought relatively modest relief (e.g., changing from quarterly to annual payments).¹⁷ Other licensees sought more dramatic restructuring.¹⁸ These requests described a range of apparent difficulties in accessing the capital markets, which many licensees argue were exacerbated by the relatively high prices per MHz per population ("per pop") paid for some of the C block licenses.

12. When formulating its original auction rules in 1994, the Commission considered the possibility of debt restructuring and observed that "if we allow a grace period or

¹² Bids were not submitted for two F block licenses, the Kokomo-Logansport, IN, BTA (B233) and the Kennewick-Pasco, MT, BTA (B228).

¹³ "Net high bid" means the total amount bid less any bidding credit.

¹⁴ Total bids received for all three 10 MHz licenses in the D, E and F block auction were \$2.5 billion.

¹⁵ See June 23, 1997, BT Wolfensohn Report in "NextWave TeleCom Inc., Overview of Telecommunications Financing Considerations", attached to NextWave *ex parte* letter, June 23, 1997, and May 6, 1997, Merrill Lynch High Yield Telecommunications Industry Update.

¹⁶ See "Wireless Telecommunications Bureau Seeks Comment on Broadband PCS C and F Block Installment Payment Issues," *Public Notice*, DA 97-82 (rel. June 2, 1997) ("*Installment Public Notice*"). See also Letter from Thomas Gutierrez, Esq., *et al* to Michele C. Farquhar, Esq., Chief, Wireless Telecommunications Bureau (March 13, 1997).

¹⁷ See, e.g., NextWave Comments at 4.

¹⁸ See, e.g., Fortunet Reply Comments at 9.

restructuring of the payment plan, we would follow our procedures . . . under the Commission's existing debt collection rules and procedures."¹⁹ We also said that in deciding whether to grant grace period requests "or to pursue other measures," we would consider a variety of factors, including payment history, how far into the license term the default occurs, and the level of build-out.²⁰ We noted that if a grace period was granted, a licensee could use that time to "maintain its construction efforts and/or operations while seeking funds to continue payments or seek from the Commission a restructured payment plan."²¹ When we later revisited the issue of licensee default, we stated that we would approve debt restructuring whereby a licensee and its lenders agree that in the event of licensee default on its installment payments, the lenders will cure the default by assuming the payments (barring assumption of license control).²² Aside from these statements, the Commission has not discussed debt restructuring.²³

13. *The Notice of Proposed Rule Making* to revise our Part 1 auction rules sought comment on several topics related to auction installment debt.²⁴ For example, we asked

¹⁹ Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, *Second Report and Order*, 9 FCC Rcd 2346, 2389 (1994) ("*Competitive Bidding Second Report and Order*"). The Commission's current rules provide that any licensee whose installment payment is more than 90 days past due shall be in default, unless a "grace period" request is filed. See 47 C.F.R. § 1.2110(e)(4). In anticipation of default on one or more installment payments, a licensee may request that the Commission permit a three to six month grace period, during which no installment payments need be made. To obtain such relief, licensees may file financial information (e.g., income statements or balance sheets) to demonstrate financial distress. Interest that accrues during the pendency of a grace period is amortized over the remaining term of the license. 47 C.F.R. § 1.2110(e)(4)(ii). Finally, these rules provide that following the expiration of any grace period without successful resumption of payment, or upon denial of a grace period request, or upon default with no such request submitted, the license of an entity paying on an installment basis is cancelled automatically and the Commission will initiate debt collection procedures. 47 C.F.R. § 1.2110(e)(4)(iii).

²⁰ *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2391. In considering whether to grant a request for a grace period, the Commission may consider, among other things, the licensee's payment history, including whether the licensee has defaulted before, how far into the license term the default occurs, the reasons for default, whether the licensee has met construction build-out requirements, the licensee's financial condition, and whether the licensee is seeking a buyer under an authorized distress sale policy. 47 C.F.R. § 1.2110(e)(4).

²¹ *Competitive Bidding Second Report and Order*, 9 FCC Rcd at 2391.

²² See *Competitive Bidding Fifth Memorandum Opinion and Order*, 10 FCC Rcd at 471.

²³ But see "Wireless Telecommunications Bureau Staff Responds to Questions About Broadband PCS C Block Auction," *Public Notice* (rel. June 8, 1995) (addressing grace periods and other default questions).

²⁴ Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Proceeding, *Order, Memorandum Opinion and Order, and Notice of Proposed Rule Making*, WT Docket No. 97-82, FCC 97-60 (rel. Feb. 28, 1997) ("*Part 1 Proceeding*").

whether we should offer higher bidder credits in lieu of installment payments, or whether we should require, in an effort to reduce the likelihood of defaults, supplementation of the upfront payment during an auction when the cumulative high bids exceed some multiple of the upfront payment.²⁵ We sought comment on (1) imposing late payment fees on installment payments; (2) the default provisions of Section 1.2104(g) in the event of installment payment defaults; and (3) revised procedures for granting grace period requests.²⁶ Many commenters opposed any new fees for late submission of installment payments, and many favored simplified grace period procedures.²⁷

14. On March 31, 1997, in response to a joint request from several C block licensees seeking to modify their installment payment obligations, and because of other debt collection issues, the Bureau suspended the deadline for payment of installment payments for all C block licensees.²⁸ On April 28, 1997, the Bureau extended the suspension to F block licensees.²⁹

15. On June 2, 1997, the Bureau, explaining that it had received several proposals from C block licensees regarding alternative financing arrangements and a petition for rule making regarding the issue of broadband PCS C block installment payments, issued the *Installment Public Notice* seeking comment on these proposals and invited any "additional proposals for addressing the C and F block broadband PCS financing terms."³⁰ The Bureau also sought comment on whether C block licensees should be permitted to prepay their installment debt. In response to the *Installment Public Notice*, the Commission received over 160 filings.³¹ The majority of commenters favor some type of relief,

²⁵ *Part 1 Proceeding* at ¶¶ 34, 35.

²⁶ *Id.* at ¶¶ 70, 74, 77.

²⁷ See Comments filed in the *Part 1 Proceeding*, including: Interactive Video Data Trade Association ("ISTA") Comments at 1 and Reply Comments at 4-5; Pocket Comments at 7-8; Merlin Reply Comments at 4. Part 1 grace period comments: AMTA Comments at 12-13; Cook Inlet Region, Inc. ("CIRI") Comments at 16; Pocket Comments at 7-8; AirTouch Comments at 8; Merlin Reply Comments at 4; Airadigm Reply Comments at 2; ISTA Reply Comments at 5-6.

²⁸ See *Installment Payments for PCS Licenses, Order*, DA 97-649 (rel. March 31, 1997).

²⁹ See "FCC Announces Grant of Broadband Personal Communications Services D, E, and F Block Licenses," *Public Notice*, DA 97-883 (rel. April 28, 1997) at 2.

³⁰ *Installment Public Notice*.

³¹ Appendix A contains a list of parties filing comments, reply comments, and *ex parte* comments, and the abbreviated names of the commenters.

including debt restructuring, spectrum disaggregation, or a penalty-free license surrender ("amnesty"), followed by a reacution.³² Other commenters express disapproval of any relief, and urge the Commission to strictly enforce its rules.³³ These comments were incorporated into the record in this docket.³⁴

16. On June 30, 1997, the Bureau conducted a public forum in Washington, D.C. ("FCC Public Forum") to discuss broadband PCS C and F block installment payment issues, including the alternative financing arrangements proposed in connection with the Public Notices issued on June 2, 1997. The FCC Public Forum consisted of two panels. The first discussed whether the Commission should consider modification of its installment payment program,³⁵ and the second discussed alternative financing arrangements and debt restructuring.³⁶ FCC staff members and the public audience also participated throughout the discussions.³⁷ An FCC Task Force also was established which included representatives from the Bureau, the Office of Plans and Policy, the Office of General Counsel, and the Office of Communications Business Opportunities. This Task Force was charged with evaluating proposals for alternative financing arrangements

³² See, e.g., NextWave Comments at 16-19; Fortunet Comments at 4-6; GWI Comments at 7-12; Horizon Comments at 13-15; Chase *ex parte* letter, August 11, 1997 at 1-2.

³³ See, e.g., Airadigm Comments at 2-3; ALLTEL Comments at 2; CIRI Comments at 2-3.

³⁴ We also note that several requests for an extension of the deadline for making payments have been filed with the Bureau pursuant to 47 C.F.R. § 1.2110(e)(4)(ii). In addition, two parties have filed requests for the restructuring of installment payment schedules, and several parties have filed requests for annual, as opposed to quarterly payment schedules. These requests will be addressed separately by the Bureau in accordance with our decision today. Several parties also have filed requests for waiver of the 7 percent interest rate applicable to eligible broadband PCS C block licensees whose licenses were conditionally granted on September 17, 1996, and who elected to utilize the Commission's installment payment plan. See Comment Requested on 7 Percent Interest Rate Imposed on C Block Installment Payment Plan Notes, *Public Notice*, DA 97-1152 (rel. June 2, 1997). These requests also will be addressed separately by the Bureau in accordance with our decision today.

³⁵ See Cook Inlet Region, Inc., Petition for Rulemaking (filed May 7, 1997). Panelists were Michael Roberts, President, National Association of PCS Entrepreneurs; Roger Linquist, CEO, General Wireless Inc.; Stephen Hillard, CEO, Cook Inlet Communications Inc.; Karen Johnson, President, Fortunet Communications, L.P.; and Shelley Spencer, General Counsel, AirGate Wireless.

³⁶ See Gutierrez Letter, Sawicki Letter, Barker Letter, and GWO informal proposal (attached to *Installment Public Notice*). Panelists were Norman Frost, Managing Director, Communications Group, Bear Stearns & Co.; John Bensche, Vice President/Senior Wireless Service Analyst, Lehman Brothers; Brian O'Reilly, managing Director-Communications Finance, Toronto Dominion Bank; Gregg E. Johnson, President, BIA Capital Corporation; and Mark Lowenstein, VP-Wireless/Mobile Communications, The Yankee Group.

³⁷ A videotape of the FCC Public Forum was placed in the record in this docket.

submitted by PCS C and F block licensees and recommending to the Commission how to respond to those proposals.

17. Both before and after the FCC Public Forum, numerous comments, reply comments, and *ex parte* letters and presentations were submitted to the Commission as part of this proceeding. Some commenters argue both for and against various proposals for licensee relief, while others argue that the Commission should enforce its rules as they currently exist to preserve the integrity of the auction program. The Commission thus has before it a wide range of proposals from entrepreneur block licensees, financial institutions and investors, equipment vendors, and other interested parties. We also have received a number of letters from individual Senators and Congressmen suggesting various approaches to resolving these issues and urging this Commission to act swiftly.³⁸ After consideration of the extensive record in this proceeding, we conclude that the options presented in this *Second Report and Order* offer the most appropriate and fair method of resolving C and F block financial concerns.

18. Although some commenters in this proceeding recommend deferral of the C block debt, the Commission declines to further explore these proposals.³⁹ We do not wish to adopt temporary solutions such as those that might only postpone these difficulties and further prolong uncertainty. Although these approaches would not necessarily result in a

³⁸ See The Honorable Christopher S. Bond, *ex parte* letter, July 14, 1997; The Honorable Pete V. Domenici, *ex parte* letter, September 10, 1997; The Honorable James M. Inhofe, Don Nickles, and Conrad Burns, *ex parte* letter, August 7, 1997; The Honorable John McCain, *ex parte* letter, August 19, 1997; The Honorable John McCain, *ex parte* letter, September 18, 1997; The Honorable Daniel Patrick Moynihan, *ex parte* letter, August 4, 1997; The Honorable Rick Boucher, *ex parte* letter, July 25, 1997; The Honorable Richard Burr, *ex parte* letter, August 11, 1997; The Honorable Thomas Davis, *ex parte* letter, July 30, 1997; The Honorable John D. Dingell, *ex parte* letter, September 16, 1997; The Honorable Steny H. Hoyer, *ex parte* letter, August 7, 1997; The Honorable Sue W. Kelly, *ex parte* letter, August 11, 1997; The Honorable W.J. "Billy" Tauzin, *ex parte* letter, August 13, 1997; The Honorable W. J. "Billy" Tauzin and Edward J. Markey, *ex parte* letter, September 16, 1997.

³⁹ Suggestions in the record addressing "deferral/restructuring" propose that the Commission provide for some period (ranging from 2-20 years) during which installment payments would be deferred. Some of these plans explicitly reduce the "net present value" of the debt (*i.e.*, the discounted value of future cash flows less initial investment), while others leave it unchanged, assuming the government interest rate as the discount rate. See, *e.g.*, BMU Comments at 2; ClearComm Comments at 3 and Reply Comments at 3; Chase Comments at 3; Alpine Comments at 9 and Reply Comments at 11; Horizon Comments at 13; SBC Comments at 9; R&S Comments at 21; Indus Comments at 3; MFRI Comments at 3; Magnacom Comments at 1-2; NABOB Comments at 3-4; RFW Comments at 2; KPCS Comments at 2; Urban Comm Comments at 9 and Reply Comments at 4; PCS Plus Comments at 2; Holland Comments at 3; Eldorado Comments at 2; MCI Comments at 2; Bear Stearns Comments at 3; Fortunet Comments at 4 and Reply Comments at 8; RTFC Reply Comments at 2; NextWave Reply Comments at 20; TRA Reply Comments at 5; The Honorable Thomas Davis *ex parte* letter, July 30, 1997; The Honorable Rick Boucher *ex parte* letter of July 25, 1997.

reduction of the current nominal debt owed to the Commission, there is no certainty the long term financial outlook facing many licensees would be improved. Finally, we believe that any further deferral of payments would be unfair to unsuccessful bidders who may have withdrawn from the C block when prices became too high, but might have remained had deferral opportunities been known.

19. Similarly, we do not wish to adopt proposals that result in a dramatic forgiveness of the debt owed. Although such an approach would not defer the problem, we believe that it would be very unfair to other bidders, and would gravely undermine the credibility and integrity of our rules. In fact, in his remarks at the Senate Hearing on High-Definition Television, Senator Hollings stated, ". . . [r]ules are rules If they cannot comply with their particular auction bid, out they go, and we will start over again. But this is not welfare. This is business."⁴⁰ Other Senators also urged the Commission to maintain the integrity of its rules for benefit of its overall auction program.⁴¹ Other commenters assert that lowering the effective price after the auction unfairly advantages those who bid too high compared with those who withdrew.⁴² In effect, the result could be interpreted as the Commission picking winners and losers on an unsupportable basis, instead of the marketplace determining winners based upon an auction. This concern was also expressed by Senator McCain.⁴³ Such a result would be contrary to our long-held goal to put licenses into the hands of those who value them the most.

20. In addition, we decline to make the disaggregation, amnesty, or prepayment options available to F block licensees. We believe that the nature and extent of any financing difficulties faced by the C block licensees appear to be different from any such problems facing entrepreneurs in the F block. We note that even after considering the difference in the spectrum block size and providing a discount for the government financing, C block prices were higher than F block prices on average. We therefore conclude that the options we adopt today will not apply to F block licensees.

⁴⁰ Transition to Digital Television Hearing Before the U.S. Senate Committee on Commerce, Science and Transportation, 105th Cong., 1st Session (September 17, 1997) (Statement of Senator Hollings).

⁴¹ See The Honorable John McCain, *ex parte* letter, September 18, 1997; The Honorable Paul D. Coverdell *ex parte* letter, September 24, 1997.

⁴² See, e.g., AirGate *ex parte* letter, July 22, 1997, attachment at 3; Conestoga Comments at 2-3; Point Comments at 2-3.

⁴³ See The Honorable John McCain, *ex parte* letter, August 19, 1997. In his letter Senator McCain states, "[t]he law does not, and indeed could not, require the Commission to substantially revise the rules that govern these entities solely for the purpose of guaranteeing their ability to retain licenses. . . . To do so would be to unjustly enrich defaulting bidders. . . [and] unjustly penalize the rest of the bidders in all the PCS auctions who bid reasonably and in reliance on the existing rules."

IV. SECOND REPORT AND ORDER

21. As discussed above, we require that C and F block licensees resume their Note payments on March 31, 1998. They will also be required to pay on that date one-eighth of the Suspension Interest, and thereafter, pay one-eighth of the Suspension Interest with each regular installment payment made until the Suspension Interest is paid in full. As used herein, "Suspension Interest" means the entire amount of the unpaid simple interest that was accrued at the rate set forth in each licensee's Note(s) during the period beginning with the date on which each license was conditionally granted through and including March 31, 1998 ("Suspension Period"). After March 31, 1998, payment due dates will conform to those indicated in the Notes executed by the licensees. We believe that there are C block licensees who will elect to continue making payments under their original C block Notes, as described above, which they will be entitled to do. In addition, we adopt three options relating to the rules governing installment payments for the C block. These are designed to help to resolve the financing issues facing C block licensees and restore certainty to the marketplace, while at the same time helping the Commission meet its statutorily mandated public interest considerations set forth under Section 309(j) of the Communications Act.⁴⁴

22. These goals will also be furthered by generally applying the same rules regarding eligibility that were used in the C block auction to the reauction of C block licenses.⁴⁵ Thus, all applicants meeting the current definition of "entrepreneur" will be eligible to bid in the reauction. We also will allow all entities that were eligible for and participated in the original C block auction to bid in the reauction. Further, with the exception of incumbent licensees who choose to disaggregate portions of spectrum they currently hold (*see* Section IV.B., *infra*), and those licensees who surrender licenses under the prepayment option (*see* Section IV.D., *infra*), all C block licensees who return licenses to the Commission will be eligible to bid on all markets in the reauction.

⁴⁴ See 47 U.S.C. § 309(j)(3)(A)-(E). Any party holding a C block license as of the January 15, 1998 election deadline will be permitted to elect any of the options we adopt.

⁴⁵ See 47 C.F.R. § 24.709.

A. Resumption of Payments

23. Background. On March 31, 1997, the Bureau suspended the deadline for payment of all broadband PCS C block installment payments until further notice.⁴⁶ By Public Notice issued on April 28, 1997, the Bureau extended the suspension to F block licensees.⁴⁷ (The March 31, 1997 Order and April 28, 1997 Public Notice will be referred to collectively as the "*Suspension Order*"). In the *Suspension Order*, we indicated that the suspension would remain in effect until further action to reinstate payment deadlines, and that interest would continue to accrue until such action was taken.

24. Discussion. The majority of commenters in this proceeding, including many members of Congress, agree that the Commission must act quickly to make a decision on what course of action to take.⁴⁸ Those favoring restructuring suggest that any further delay will make any relief ineffective because further delay to market puts C block licensees at a competitive disadvantage and makes attracting investment capital to support their build-out even more difficult.⁴⁹ In addition, many commenters opposed to restructuring also support a timely decision, believing that a cloud of uncertainty hangs over the wireless sector until the Commission decides what action to take.⁵⁰ We therefore believe that it is necessary to remove any uncertainties surrounding the installment payment program by announcing a date certain for the resumption of installment payments.

25. Accordingly, effective March 31, 1998, we rescind the *Suspension Order* and reinstate the installment payment plans for all C and F block licensees. We also direct that all payments due and owing on and after March 31, 1998 be made in accordance with

⁴⁶ See n.28, *supra*. See also Letter from Daniel B. Phythyon, Acting Chief, Wireless Telecommunications Bureau to Mark J. Tauber, Piper & Marbury (April 30, 1997) ("Tauber Letter").

⁴⁷ See n.29, *supra*.

⁴⁸ See, e.g., ClearComm Comments at 3; Chase Comments at 2; Alpine Comments at 11 and Reply Comments at iii, 9; AmeriCall Comments at 10; MCI Comments at 2 and Reply Comments at 7-8; Cellexis Reply Comments at 2-3; OnQue Reply Comments at 10; NextWave Reply Comments at 5-6; The Honorable W. J. "Billy" Tauzin and the Honorable Edward J. Markey *ex parte* letter, September 16, 1997; The Honorable John Dingell, *ex parte* letter, September 16, 1997; The Honorable John McCain *ex parte* letters of August 19, 1997 and September 18, 1997.

⁴⁹ See, e.g., MCI Reply Comments at 7-8 (quoting "Benschke Marks" July 1, 1997, summary of panel discussions at the FCC Public Forum of June 30, 1997).

⁵⁰ See, e.g., U.S. Airwaves Reply Comments at 3; Nokia *ex parte* letter, September 15, 1997 at 1; AmeriCall, ClearComm, and Chase, *ex parte* letter, September 17, 1997 at 1.

the terms of each licensee's Note, associated Security Agreement, and the Commission Orders and regulations. All Suspension Interest will become due and payable over a two-year period as discussed in paragraph 27, *infra*. With the exception of the modifications provided in this *Second Report and Order*, all Commission rules regarding installment payments and defaults for the broadband PCS C and F blocks will remain in effect. Any licensee that fails to remit the payment due on March 31, 1998, and remains delinquent for more than 60 days (*i.e.*, fails to make the March 31, 1998, payment on or before May 30, 1998), will be in default on its license.⁵¹ Given the one year suspension, we believe that providing a shorter automatic grace period is justified. See paragraph 30, *infra*.

26. We conclude that any licensee that continues under its original Note(s), will be required to pay on March 31, 1998, one-eighth of the Suspension Interest in accordance with the provision of paragraph 27, *infra*. Thereafter, regular payments will become due and payable in accordance with the provisions of the licensee's original Note.⁵²

27. We conclude that it could place a significant burden on licensees to require payment of the entire amount of the Suspension Interest on March 31, 1998. We therefore require that broadband PCS C and F block licensees submit one-eighth of the Suspension Interest on March 31, 1998, and one-eighth of the Suspension Interest with each regular installment payment made thereafter until the Suspension Interest is paid in full. After March 31, 1998, payment due dates will conform to those indicated in the Note(s) executed by the licensees. While the first regular installment payment next made after March 31, 1998, will be pro-rated to account for the resumption of payments on March 31, 1998, all regular installment payments thereafter will be in the amounts shown on the amortization schedule attached to and made a part of each Note, as amended, plus the applicable payments of Suspension Interest. For example, for those licensees granted in September, 1996 whose regular installments occur on March 31, June 30, September 30, and December 31 of each year, the next regular payment due after March 31, 1998, will be due on June 30, 1998, and will include the amount of interest accrued from April 1, 1998, through and including June 30, 1998, plus one-eighth of the Suspension Interest. The next regular payment will be due on September 30, 1998, and will be due in the amount shown on the amortization schedule attached to the Note (*i.e.*, interest from July 1, 1998, through and including September 30, 1998), plus one-eighth of the Suspension Interest. Regular payments will continue on each and every December 31, March 31, June 30, and September 30 thereafter until the Note is paid in full. For these licensees, the payment due on December 31, 1999, will be the last payment due that includes any

⁵¹ See 47 C.F.R. § 1.2110(e)(4)(i). The 60-day period is an exception to our existing rules that provide for an automatic 90-day non-default period.

⁵² See the provisions of paragraph 27, *infra*.

amortized Suspension Interest.⁵³ All payments after that date will continue in accordance with the terms of the amortization schedule attached to the Note executed by the licensee. All installment payments previously made by licensees who elect one of the three options will be applied in accordance with the provisions set forth under the discussion of each option, *see* Section IV., *infra*.⁵⁴

28. We delegate to the Bureau authority to set forth all procedures for implementing the resumption of payments.

29. Broadband PCS C block licensees choosing to surrender their licenses pursuant to the amnesty option described in Section IV.C., *infra* and those surrendering licenses that are not prepaid pursuant to the prepayment option described in Section IV.D., *infra*, will be required to return to the Commission each original Note and Security Agreement for cancellation by the Commission.

30. We will not entertain any requests for an extension of the March 31, 1998 deadline beyond the automatic 60-day non-default period set forth in paragraph 25, *supra*. The *Suspension Order* already has afforded a significant period to licensees during which

⁵³ For those licenses granted in November, 1996 whose regular installments occur on the last day of May, August, November, and February of each year, the next regular payment due after March 31, 1998, will be due on May 31, 1998, and will include the amount of interest accrued from April 1, 1998 through and including May 31, 1998, plus one-eighth of the Suspension Interest. The next regular payment will be due on August 31, 1998, and will be due in the amount shown on the amortization schedule attached to the Note (*i.e.*, interest from June 1, 1998, through and including August 31, 1998), plus one-eighth of the Suspension Interest. Regular payments will continue on the last day of the month of November, February, May and August thereafter until the Note is paid in full. For these licensees, the payment due in February, 2000 will be the last payment due that includes any amortized Suspension Interest. Any payments after this date would continue in accordance with the terms of the amortization schedule attached to the Note executed by the licensee.

For those licenses granted in January, 1997 whose regular installments occur on the last day of April, July, October and January of each year, the next regular payment due after March 31, 1998, will be due on April 30, 1998, and will include the amount of interest accrued from April 1, 1998 through and including April 30, 1998, plus one-eighth of the Suspension Interest. The next regular payment will be due on July 31, 1998, and will be due in the amount shown on the amortization schedule attached to the Note (*i.e.*, interest from May 1, 1998, through and including July 31, 1998), plus one-eighth of the Suspension Interest. Regular payments will continue on the last day of the month of October, January, April and July thereafter until the Note is paid in full. For these licensees, the payment due in January, 2000 will be the last payment due that includes any amortized Suspension Interest. Any payments after this date would continue in accordance with the terms of the amortization schedule attached to the Note executed by the licensee.

⁵⁴ For example, for a licensee electing to continue making payments under its existing Note, if a licensee had accrued \$100,000 in Suspension Interest during this period and had previously made installment payments totaling \$20,000, then the amount of Suspension Interest would be \$80,000 (no additional interest will be assessed against this amount) and would be payable in eight equal payments of \$10,000.

payments were not required. Therefore, we intend to deny any requests for a grace period beyond the automatic 60-day non-default period we adopt herein, including any requests made pursuant to Section 1.2110 of the Commission's rules.⁵⁵

31. C block licensees may resume payments under their current Note or elect one of the three options described below.

B. Disaggregation of Spectrum for Reauction

32. Background. Existing Commission rules permit broadband PCS licensees to disaggregate their spectrum.⁵⁶ Under these rules, a broadband PCS licensee in the A, B, D, or E block may file an application with the Commission requesting permission to disaggregate any portion of its spectrum to other eligible entities at any time following the issuance of its license.⁵⁷ The existing rules also permit a C or F entrepreneur block licensee to disaggregate spectrum to other C and F block eligible entities for the first five years following the issuance of a license.⁵⁸ After the first five years of holding a license, an entrepreneur block licensee also may disaggregate to any qualified non-entrepreneur, provided that the non-entrepreneur compensates the federal government through an unjust enrichment payment proportionate to the amount of spectrum disaggregated.⁵⁹ If the entrepreneur block licensee has elected to pay using installment payments, the qualified entity receiving the disaggregated spectrum will also be permitted to make installment payments equaling its *pro rata* portion of the remaining government obligation.⁶⁰ The rules require that new notes and security agreements be executed by both the former and the new licensee.⁶¹

⁵⁵ 47 C.F.R. § 1.2110(e)(4)(ii).

⁵⁶ Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees, *Report and Order and Further Notice of Proposed Rule Making*, 11 FCC Rcd 21831 (1996) (partitioning and disaggregation rules now codified at 47 C.F.R. § 24.714) (hereinafter "*Disaggregation Order*").

⁵⁷ See 47 C.F.R. § 24.714(a)(1) (parties "shall request an authorization for partial assignment of a license pursuant to Section 24.839").

⁵⁸ 47 C.F.R. § 24.714(a)(3).

⁵⁹ 47 C.F.R. § 24.714(c)(1).

⁶⁰ 47 C.F.R. § 24.714(d)(1).

⁶¹ 47 C.F.R. § 24.714(d)(3)(ii).

33. A number of C block licensees, as well as several financial advisors and equipment manufacturers, have requested that the Commission permit licensees to disaggregate spectrum and surrender it to the Commission for reauction in exchange for a *pro rata* reduction in debt.⁶² Generally, these proposals differ in: (1) the amount of spectrum that could be surrendered to the Commission; (2) the amount and form of credit for the spectrum surrendered; and (3) the terms and eligibility requirements for reauction of the disaggregated spectrum.

34. AmeriCall proposes "amnesty by thirds," which would permit each licensee to disaggregate its C block license into three 10 MHz portions, any one of which the licensee could surrender to the Commission for forgiveness of its related installment debt.⁶³ Under this proposal, surrendered spectrum would be reauctoned and the Commission would retain the down payments made by the initial licensee.⁶⁴ AmeriCall suggests allowing a licensee to participate in reauctions of C block spectrum, but only reauctions for spectrum other than that surrendered by the licensee.⁶⁵ AmeriCall also suggests that a licensee be required to wait two years before being allowed to reacquire spectrum that it has surrendered to the Commission.⁶⁶ AmeriCall proposes that C block licensees continue operating under the terms and conditions of the initial payment obligation, but that the Note be reduced in proportion to the amount of spectrum surrendered and the associated Security Agreements and Uniform Commercial Code ("UCC") filings modified accordingly.⁶⁷

35. A number of other commenters propose that the Commission adopt variations of AmeriCall's disaggregation proposal. BIA Capital's disaggregation proposal generally tracks AmeriCall's proposal, but would allow licensees to surrender 10, 20 or 30 MHz of spectrum.⁶⁸ Magnacom proposes that parties be allowed to disaggregate up to 15 MHz of

⁶² See, e.g., AmeriCall *ex parte* letter, August 5, 1997 at 1; GWI *ex parte* letter, August 15, 1997 at 1; Magnacom *ex parte* letter, August 13, 1997 at 1; BIA Capital *ex parte* letter, August 4, 1997 at 1-2; Nokia *ex parte* letter, September 16, 1997 at 1; Horizon Comments at 5-6 (all seeking a liberalization of the Commission's current rules for disaggregation to private parties).

⁶³ AmeriCall *ex parte* letter, August 5, 1997 at 2.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ BIA Capital *ex parte* letter, August 4, 1997 at 1-2.

spectrum and that all payments be applied to the portion of the license retained.⁶⁹ Urban Comm advocates that parties be allowed to disaggregate up to 10 MHz of spectrum.⁷⁰ In a recent joint filing, AmeriCall, Clearcomm, and Chase support a disaggregation option that would allow a licensee to disaggregate 15 MHz from one or more of the C block licenses it now holds, on a license-by-license basis, and to have its indebtedness reduced proportionately (*i.e.*, by 50%). The disaggregated spectrum would be reauctioned expeditiously and the disaggregating licensee would be precluded from rebidding on spectrum it has disaggregated.⁷¹

36. Parties advocating a disaggregation option cite a number of benefits. AmeriCall contends its "amnesty by thirds" proposal would help the Commission avoid both wide scale bankruptcies as well as the need for a "bail-out" in the form of radical debt restructuring.⁷² It contends that by requiring licensees to forfeit all down payments for the surrendered spectrum, disaggregation imposes a *penalty* on C and F block licensees who choose this option.⁷³ AmeriCall argues further that spectrum disaggregation benefits participating licensees by allowing them to reduce their debt, which would in turn increase their access to capital markets.⁷⁴ AmeriCall contends that because it avoids the "more substantial financial fixes" advocated by other debtors, disaggregation is a fairer proposal, and one less prone to subsequent litigation.⁷⁵ Finally, AmeriCall contends that the "amnesty by thirds" proposal is pro-competitive in that it will introduce numerous new competitors, including licensees from other spectrum blocks.⁷⁶ GWI indicates that spectrum disaggregation "works well" for C block licensees in small markets where a full 30 MHz of spectrum is not required.⁷⁷ Urban Comm cites several public interest benefits deriving from spectrum disaggregation. According to Urban Comm, disaggregation

⁶⁹ Magnacom, *ex parte* letter, August 13, 1997 at 1; *see also* Northern Michigan PCS Consortium, L.L.C. *ex parte* letter, August 14, 1997 (supporting the application of all payments to the debt owed to the FCC).

⁷⁰ Urban Comm *ex parte* letter, September 17, 1997 at 4-5.

⁷¹ AmeriCall, ClearComm, and Chase *ex parte* letter, September 17, 1997.

⁷² AmeriCall *ex parte* letter, August 5, 1997 at 3-4.

⁷³ *Id.* at 3.

⁷⁴ *Id.* at 4. *See also* GWI *ex parte* letter, August 15, 1997 at 1.

⁷⁵ AmeriCall *ex parte* letter, August 5, 1997 at 4.

⁷⁶ *Id.* at 5.

⁷⁷ GWI *ex parte* letter, August 15, 1997 at 1.

provides spectrum to qualified designated entities without delay, decreases time to market for existing licensees, and injects new competition into the marketplace.

37. In opposition to the disaggregation option, CONXUS, a narrowband PCS licensee, argues that the option does not confer on narrowband licensees benefits comparable to those accorded to broadband licensees since there is insufficient bandwidth in narrowband to allow disaggregation to occur without interfering with nationwide programs.⁷⁸ Omnipoint argues that any type of "amnesty solution," including spectrum disaggregation, would require the Commission to adopt rules protecting companies that have substantially built-out their networks.⁷⁹

38. Discussion. In view of the substantial support and public interest benefits accruing from an alternative that would permit a voluntary surrender of spectrum to the Commission while maintaining the fairness and integrity of the auction, we adopt a disaggregation option. Under the disaggregation option we adopt today, any C block licensee may disaggregate a portion of its spectrum from each of its licenses and surrender it to the Commission for reauction.⁸⁰ The licensee must disaggregate 15 MHz of spectrum it holds across all BTAs in an MTA. These provisions prevent licensees from selectively surrendering spectrum for which they may believe they paid too much, or otherwise discarding spectrum in markets that may be more difficult to serve (commonly referred to as "cherry-picking" of licenses or spectrum).⁸¹ We limit the ability of licensees to selectively disaggregate spectrum within an MTA also to facilitate attempts by new bidders to aggregate spectrum and initiate service. Because we are allowing disaggregation on an MTA-by-MTA basis, special exemptions for built-out systems -- such as the one we adopt under the amnesty option discussed below in paragraphs 53-58 -- are unnecessary. In cases where a licensee has built-out a BTA, it can choose either to retain all 30 MHz in each of the BTAs it has licenses for in an MTA, or it can operate its built-out system with 15 MHz. We believe that this flexibility, compared to the "all-or-nothing" approach, mitigates the need for a build-out exception for this option.

⁷⁸ CONXUS *ex parte* letter, August 27, 1997 at 1-2.

⁷⁹ Omnipoint *ex parte* letter, September 5, 1997 at 2.

⁸⁰ See Section V., *infra* (Further Notice of Proposed Rule Making requesting comment on rules and procedures for reauction).

⁸¹ For example, if a licensee holds four BTA licenses in MTA No. 4 (comprising Northern California and Northern Nevada), the licensee must choose to disaggregate 15 MHz from each or none of the four BTA markets.

39. Licensees electing this option will be required to return half of their spectrum at 1895 - 1902.5 MHz paired with 1775 - 1825 MHz, which is spectrum contiguous to the PCS F block. The surrender of spectrum adjacent to the F block will provide sufficient contiguous spectrum for both the incumbent and new licensees to offer competitive PCS services.

40. Under the disaggregation option, the Commission will reduce the amount of the debt owed by an amount equal to the *pro rata* portion of the spectrum returned to the Commission, *i.e.*, by 50%, subject to coordination with the Department of Justice pursuant to applicable federal claims collection standards.⁸² The Commission will retain the *pro rata* portion of the down payments applicable to the spectrum. The following illustrates how this proposal would operate in practice:

Company X holds a 30 MHz license in a BTA market; paid the Commission \$100,000 in its down payment; and owes the Commission \$900,000 on a net bid of \$1,000,000. Company X could disaggregate 15 MHz and surrender it to the Commission for reacquisition, and the Commission would retain \$50,000 of the down payment. In return, the Commission would reduce the licensee's obligation to the government to \$450,000.

The face amount of the licensee's Note will be adjusted to reflect the new principal, and the Note will then be amortized from the original date of execution to calculate the payments at the new face amount of the Note. All installment payments made as of March 31, 1997,⁸³ will be applied to reduce the amount of the Suspension Interest calculated on the new principal balance to be made in eight equal payments beginning March 31, 1998.

41. Where applicable, the existing disaggregation rules will govern this option.⁸⁴ However, the broadband disaggregation rules were not designed for the surrender of spectrum to the Commission.⁸⁵ Thus, existing rule provisions on designated entity transfer restrictions,⁸⁶ unjust enrichment,⁸⁷ installment payments, abbreviated license terms⁸⁸ and

⁸² See 4 C.F.R. Parts 101-105.

⁸³ This includes any payments due prior to and on March 31, 1997.

⁸⁴ See 47 C.F.R. § 24.714 (broadband PCS partitioning and disaggregation rules).

⁸⁵ See *Disaggregation Order*, 11 FCC Rcd 21831.

⁸⁶ 47 C.F.R. § 24.714(a)(3).

⁸⁷ 47 C.F.R. § 24.714 (c)(1), (2), (3).

construction requirements,⁸⁹ restrictions on the amount of spectrum that can be disaggregated,⁹⁰ and similar rules will not apply to disaggregation to the Commission authorized by this option. In order to take advantage of the disaggregation option, licensees will be required to make an election consistent with the procedures specified in Section IV.E., *infra*.

42. In order to avoid unjust enrichment, licensees (defined as qualifying members of the licensee's control group, and their affiliates) will be prohibited from bidding in the subsequent reauction for spectrum the incumbent licensee has disaggregated. However, they will be permitted to acquire spectrum for any BTA for which the incumbent licensee has not disaggregated spectrum. We do not believe that it would be fair for these entities to benefit from a reauction after taking advantage of the disaggregation option. This prohibition against subsequent participation in the reauction for the spectrum disaggregated by the same party is supported by a number of commenters.⁹¹ To ensure further against unjust enrichment, these entities will also be barred from reacquiring the spectrum they have surrendered to the Commission through a secondary market transaction for a period of two years from the start of a reauction.⁹²

43. We believe that the disaggregation option set forth above is consistent with our goals in this proceeding and serves the public interest. First, this option preserves the credibility and integrity of the Commission's rules. The relief we provide is another means of making more efficient use of the spectrum. It does not provide a windfall or unfair advantage to the C block licensees availing themselves of the disaggregation option. The disaggregating licensee continues to pay for spectrum at its net high bid price,⁹³ and the Commission receives full payment for the spectrum retained by the licensee. In addition, the Commission will retain 50% of the down payment consistent with the amount of spectrum being surrendered to the Commission. Moreover, disaggregation with

⁸⁸ 47 C.F.R. § 24.714(e).

⁸⁹ 47 C.F.R. § 24.714(f). Thus, a licensee that disaggregates spectrum to the Commission must still fully fulfill its original construction requirements with regard to the 15 MHz that it retains.

⁹⁰ 47 C.F.R. § 24.714(b)(3) ("Spectrum may be disaggregated in any amount").

⁹¹ See Horizon Comments at 14; AmeriCall *ex parte* letter, July 11, 1997; AirGate Wireless, *ex parte* letter, Sept. 9, 1997.

⁹² See AmeriCall *ex parte* letter, August 5, 1997 at 2.

⁹³ See n.13, *supra*.

a *pro rata* adjustment in debt is consistent with the Commission's rules with regard to private party disaggregation.⁹⁴

44. Second, the disaggregation option is fair and equitable to all interested parties. Losing bidders and other eligible parties will have an opportunity to bid on the disaggregated spectrum in the reauction. Also, by limiting disaggregation of spectrum to 15 MHz blocks on a BTA within an MTA basis, we increase the likelihood that the licenses available for reauction will be in quantities and geographic clusters that are commercially viable. In addition, by providing this limited opportunity to "pick and choose" which licenses to disaggregate, and not requiring the surrender of all 30 MHz of the spectrum it holds in an MTA, we make this option fair to those who have built-out some of their markets.⁹⁵ Although this option is not being made available to the narrowband or F block licensees, we do not believe that it is unfair to these parties or to other Commercial Mobile Radio Service ("CMRS") providers. This option does not materially alter the competitive landscape for CMRS services. Given the current state of the market and the Commission's existing rules, it is reasonable to expect that some C block spectrum will be transferred to competitors through reauction or private sale. Our actions here facilitate this process, by reducing the amount of spectrum that would otherwise be marketed in a piecemeal fashion. Moreover, as noted above, other parties will have an opportunity to bid on this spectrum in the reauction and, because of the spectrum's proximity to the F block, the spectrum may be particularly attractive to prospective licensees.

45. Third, the disaggregation option is consistent with our Section 309(j) obligation to promote opportunities for designated entities, including small businesses. According to a number of commenters, including those in the financial community, a reduced government debt burden and the resulting lower cost per MHz pop will enhance prospects for existing small business licensees to attract debt and equity capital.⁹⁶ This, in turn, should assist current C block licensees in moving forward with the deployment of their service offerings. Disaggregation will also provide opportunities for other small businesses to enter the PCS market in the future. Finally, by requiring C block licensees to disaggregate the 15 MHz of spectrum adjacent to the F block, we provide opportunities for existing F block licensees to aggregate spectrum in a manner that could benefit their planned or prospective service offerings.

⁹⁴ 47 C.F.R. § 24.714.

⁹⁵ See, e.g., Omnipoint *ex parte* letters, August 18, 1997, September 3, 1997, and September 5, 1997 at 2.

⁹⁶ BIA Capital, *ex parte* letter, August 4, 1997 at 1.

C. Surrender Licenses for Reauction (Amnesty)

46. Background. In response to our *Installment Public Notice* seeking comment on broadband PCS installment payment issues, a number of commenters express support for an option that would permit C block licensees to surrender their licenses to the Commission for reauction in exchange for forgiveness of the related debt and any interest and penalties⁹⁷ (generally referred to as "amnesty").⁹⁸ Commenters have submitted a variety of proposals for the terms of an amnesty option. Horizon states that an amnesty program should be designed to prevent a large scale surrender of licenses, and should encourage return of a license only in advance of a business failure. Horizon would permit a licensee to be selective in surrendering licenses, but would prohibit a licensee from rebidding on any license it surrendered and would prohibit a licensee's participation in the reauction entirely if it surrendered a total of more than five licenses. To facilitate this plan, Horizon asks that we waive our current cross default policies so that a licensee able to construct some, but not all, of its licenses will be able to return those licenses it cannot construct without placing all of its licenses in default. Horizon concludes that adopting such an amnesty plan would serve the public interest by getting licenses in the hands of companies willing and able to provide service to the public.⁹⁹

47. R&S¹⁰⁰ and Cyber Sites¹⁰¹ propose that the Commission permit C block licensees to surrender their licenses and obtain a full refund of all payments without penalty. GWI suggests that the Commission allow licensees to exchange all licenses in return for a "store credit" equal to 100% of the original down payment, which could be applied to licenses won in a "cash upfront" reauction. GWI contends that there should be no restriction on the licensee's bidding in the reauction.¹⁰² NextWave, too, supports an "amnesty day" for the surrender of licenses and a subsequent reauction, but stresses that licensees should be allowed to retain their most desirable licenses.¹⁰³ NextWave submits that the total amount

⁹⁷ See 47 C.F.R. §§ 24.708(b), 1.2109(c), 1.2104(g)(2).

⁹⁸ See, e.g., R&S *ex parte* letter, August 11, 1997 at 1; MCI *ex parte* letter, August 14, 1997 at 2; Urban Comm *ex parte* letter, August 21, 1997; GWI *ex parte* letter, August 4, 1997; NextWave *ex parte* letter, July 29, 1997; El Dorado *ex parte* letter, August 13, 1997 at 2-3.

⁹⁹ Horizon Comments at 13-15.

¹⁰⁰ R&S Comments at 13-15.

¹⁰¹ Cyber Sites Comments at 3.

¹⁰² GWI *ex parte* letter, August 4, 1997.

¹⁰³ NextWave *ex parte* letter, July 29, 1997.

of the original down payments should be credited toward reauction bids "with a reasonable penalty."¹⁰⁴

48. Other commenters, including C block licensees AmeriCall¹⁰⁵ and Chase,¹⁰⁶ endorse a "simple amnesty" program pursuant to which a licensee would be obliged to surrender all of its C block licenses in return for forgiveness of its debt and an opportunity to participate in any reauction of the returned licenses or other licenses. Equipment manufacturer Nokia also endorses an amnesty program that would permit a licensee to surrender all of its C block licenses in return for forgiveness of all associated debt and an opportunity to bid at the reauction.¹⁰⁷

49. Fortunet states that a simple amnesty program does not provide sufficient relief, and asks that licensees receive a refund of their down payments and interest payments made on those licenses surrendered.¹⁰⁸ MCI also supports permitting licensees to surrender all of their C block licenses with no further financial obligation, but suggests that a licensee be permitted to receive only "a fraction" of the down payment already made.¹⁰⁹

50. In addition to the many commenters who oppose any rule changes, including a grant of amnesty,¹¹⁰ a number of commenters have resisted implementation of an amnesty plan and have identified various problems specific to the amnesty option. Cook Inlet recommends that the Commission strictly enforce its rules as they currently exist, and take aggressive measures to collect all debt,¹¹¹ noting that other alternatives, including an amnesty plan, invite litigation and threaten the auction program's integrity.¹¹² However,

¹⁰⁴ NextWave *ex parte* letter, August 5, 1997.

¹⁰⁵ AmeriCall *ex parte* letter, July 11, 1997; AmeriCall, ClearComm, and Chase *ex parte* letter, September 17, 1997.

¹⁰⁶ Chase *ex parte* letter, August 11, 1997.

¹⁰⁷ Nokia *ex parte* letter, September 16, 1997.

¹⁰⁸ Fortunet Reply Comments at 5.

¹⁰⁹ MCI *ex parte* letter, August 14, 1997. *See also* Chase *ex parte* letter, August 11, 1997.

¹¹⁰ *See, e.g.,* ClearComm *ex parte* letter, August 7, 1997, opposing "any substantially penalty-free amnesty" and advocating, *inter alia*, penalties such as denial of future designated entity status.

¹¹¹ Cook Inlet *ex parte* letter, August 5, 1997 at 1.

¹¹² Cook Inlet *ex parte* letter, August 15, 1997.